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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/718,943	11/22/2000	Thomas Gassenmeier	H 4325	1228

7590

11/28/2005

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EXAMINER

DOUYON, LORNA M

ART UNIT	PAPER NUMBER
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1751

DATE MAILED: 11/28/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

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Office Action Summary	Application No.	Applicant(s)	
	09/718,943	GASSENMEIER ET AL.	
	Examiner	Art Unit	
	Lorna M. Douyon	1751	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 29 August 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 10-12,14 and 15 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 10-12,14 and 15 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 29 August 2005 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

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1. This action is responsive to the amendment filed on August 29, 2005.
2. Claims 10-12, 14 and 15 are pending.
3. The objection to the drawings is withdrawn in view of Applicants' submission of a replacement sheet.
4. Claims 10-12 and 14 stand rejected under 35 U.S.C. 103(a) as being unpatentable over Beaujean et al. US Patent No. 5,505,875), hereinafter "Beaujean" for the reasons set forth in the previous office action.
5. Claims 10-12, 14 and 15 stand rejected under 35 U.S.C. 103(a) as being unpatentable over Brichard (US Patent No. 4,421,669), hereinafter "Brichard" for the reasons set forth in the previous office action.

Response to Arguments

6. Applicants' arguments filed August 29, 2005 have been fully considered but they are not persuasive.

With respect to the obviousness rejection based separately upon Beaujean and Brichard, Applicants argue that the stepped pH profile of the invention was an unexpected result of a combination of elements which were both known and unknown in the art, which stepped pH profile was not disclosed in any of the prior art cited by the Examiner. Applicants argue that

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without any such disclosure of a stepped pH profile in the cited prior art, there could be no reasonable expectation that a stepped pH profile could result from Beaujean or from Brichard.

The Examiner respectfully disagrees with the above arguments because even though Beaujean or Brichard does not explicitly disclose the stepped pH profile as that recited, as stated in the previous office action, it would have been obvious to one of ordinary skill in the art at the time the invention was made to reasonably expect the coated percarbonate product of Beaujean or Brichard to behave similarly because same process steps and similar ingredients have been utilized. The showing on pages 5-6 and Figure 1 regarding the stepped pH profile has been carefully considered, however, the percarbonate coated with stearic acid of the present invention has not been compared with the closest prior art, which are Beaujean or Brichard. The prior art of record teaches coating of percarbonate with coating agents like fatty acids, which include stearic acid, as one of them. The showing compares stearic acid-coated percarbonate and uncoated percarbonate. A good showing would have at least compared the stearic acid-coated percarbonate with percarbonate coated with the coatings of the prior art, at least with a fatty acid coating other than stearic acid for a valid conclusion of unexpected results.

Applicants also argue that even though Beaujean discloses that the coating agent can be a fatty acid, its examples do not use stearic acid, and instead utilize polyethylene glycol, beeswax, and a wax-like paraffin mixture. Applicants also argue that Brichard's examples utilized VYBAR brand waxes (ethylene polymers), PETROLITE waxes (ethylene polymer and a petroleum fraction), and KPE brand wax (a product of esterification by alcohols of an acid wax obtained by oxidation of bitumen derived from lignite).

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The Examiner respectfully disagrees with the above arguments because a reference is not limited to the working examples, see *In re Fracalossi*, 215 USPQ 569 (CCPA 1982).

Applicants also argue that neither Beaujean nor Brichard disclose the calculation of a preferred amount of coating material which is a function of the weight of the percarbonate particles, radius of the percarbonate particles and length units.

The Examiner respectfully disagrees with the above arguments because, as already stated in the previous office action, Beaujean teaches an amount of at least about 1% by weight of coating material based on the finished product in col. 9, lines 16-26 and the particle sizes of the finely divided sodium percarbonate in col. 9, lines 27-32, and separately, Brichard teaches the amount of coating agent in col. 3, lines 40-43 and the particle sizes of the percarbonate in col. 4, lines 34-37, hence, based on these parameters, and by calculation, the amount of coating agent in Beaujean or Brichard would have been within the range governed by the present invention.

Conclusion

7. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event,

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however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Lorna M. Douyon whose telephone number is (571) 272-1313. The examiner can normally be reached on Mondays-Fridays from 8:00AM to 4:30 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Yogendra Gupta can be reached on (571) 272-1316. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Lorna M. Douyon
Lorna M. Douyon
Primary Examiner
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